

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of SOUTHERN STATES)	DOCKET NO. 890951-WS
UTILITIES, INC. for a rate increase in)	ORDER NO. 23419
Duval County)	ISSUED: 8-29-90
)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 FRANK S. MESSERSMITH

ORDER DISMISSING PETITION ON, AND
 REVIVING AND CONSUMMATING PROVISIONS OF,
 PROPOSED AGENCY ACTION ORDER NO. 22871

BY THE COMMISSION:

Background

On November 2, 1989, Southern States Utilities, Inc. (Southern States) completed the minimum filing requirements for a general rate increase in Duval County, and that date was established as the official date of filing. The approved test year for this proceeding is the twelve month period ended May 31, 1989. In accordance with Section 367.081(8), Florida Statutes, Southern States requested that this case be processed under the Commission's proposed agency action procedure.

Southern States requested final rates designed to generate annual wastewater revenues of \$877,559, which exceed annualized test year revenues by \$250,697 (39.90 percent). Although it did not request any increase for water service, Southern States did request that we restructure its water rates in order to conform with our policy of basing such rates upon the size of the meter.

By Order No. 22393, issued January 10, 1990, we suspended Southern State's proposed wastewater rates, granted an annual interim increase of \$66,047 (10.49 percent) in wastewater revenues, subject to refund, and placed \$100,000 of its annual water revenues subject to refund.

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By Order No. 22871, issued April 30, 1990, we proposed to reduce Southern States' rates for water service and to increase its rates for wastewater service. Also by Order No. 22871, we proposed to establish uniform rates for Southern States' Duval County systems. On May 21, 1990, Alvin R. Weikel, a customer of Southern States, filed a timely protest to Order No. 22871. Pursuant to Mr. Weikel's protest, this case was scheduled for an administrative hearing on August 16 and 17, 1990.

By Order No. 23001, issued May 30, 1990, the Prehearing Officer established a schedule to govern the key activities in this case. According to Order No. 23001, Mr. Weikel was to prefile any direct testimony and/or exhibits no later than July 16, 1990. In addition, pursuant to Order No. 23001 and Rule 25-22.038(3), Florida Administrative Code, Mr. Weikel was to file a prehearing statement no later than July 26, 1990. Finally, according to Order No. 23001, Mr. Weikel was to prefile any rebuttal testimony and/or exhibits on or before July 26, 1990. Mr. Weikel failed to meet any of these deadlines.

A prehearing conference was held before Commissioner Betty Easley, as Prehearing Officer, on July 30, 1990. At the prehearing conference, Southern States made an oral motion to dismiss Mr. Weikel's protest based upon his failure to file any testimony or a prehearing statement.

Motion to Dismiss

Southern States' motion was twofold. First, Southern States argued that Mr. Weikel's protest should be dismissed, in any event, based upon his failure to file any testimony or a prehearing statement as required by Order No. 23001. In support thereof, Southern States pointed out that, under Rule 25-22.042(1), Florida Administrative Code, "[t]he failure or refusal of a party to comply with any lawful order may be cause for dismissing the party from the proceeding." Further, under Rule 25-22.042(2), Florida Administrative Code, "[i]f a dismissal is entered against the party who has the burden of proof, the proceeding will be dismissed. If a dismissal is entered against a party who does not have the burden of proof, the party shall not be allowed to participate in the proceeding as a party." Accordingly, Southern States argued that, regardless of who has the burden of proof, Mr. Weikel's failure to comply with the provisions of Order No. 23001 should at least preclude him from participating as a party.

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Second, Southern States argued that, under both Order No. 23001 and Rule 25-22.038(3), Florida Administrative Code, Mr. Weikel's failure to file a prehearing statement constitutes a waiver by him of any issue not raised by other parties or the Commission and operates to preclude him from presenting any testimony in support of his position. Accordingly, Southern States argued that Mr. Weikel cannot support his position.

Mr. Weikel responded to Southern States' motion by stating that his position is and has always been as stated in his petition; he opposes any form of cross-subsidization. Mr. Weikel argued that his protest was aimed not so much at Southern States or the final revenue figures or rates approved by this Commission, but with our "policy" of establishing uniform, county-wide rates. Mr. Weikel further argued that his position more or less defied any attempts to reduce it to testimony form. Finally, Mr. Weikel argued that none of the information required in a prehearing statement is particularly applicable to him, with the possible exception of a statement of basic position; however, he argued that his basic position is as stated in his protest. At no point did Mr. Weikel argue that he did not have notice of or did not understand his obligations under Order No. 23001.

We cannot help but agree with Southern States. Along with the right to participate in proceedings before this Commission comes the obligation to participate responsibly and in accordance with our rules and orders. Mr. Weikel did not comply with the requirements of Order No. 23001 and Rule 25-30.038, Florida Administrative Code. Under Rule 25-22.042, Florida Administrative Code, such failure should operate, at a minimum, to prevent Mr. Weikel from participating as a party.

However, even if we allowed Mr. Weikel to participate as a party, since he is precluded from presenting any testimony in support of his position by the provisions of Order No. 23001 and Rule 25-22.038(3), Florida Administrative Code, the only avenue left for him to attempt to support his claim is through cross-examination. As already noted, Mr. Weikel's objection lies not with the level of revenues allowed or the final rates, but with our "policy" of setting uniform, county-wide rates. The only testimony provided by Southern States even remotely related to the uniform rate issue is an approximately one-half-page discussion of the level of cross-subsidization. Since the scope of cross-examination is limited to the scope of the

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testimony, Mr. Weikel will be unable to examine any of the witnesses regarding this Commission's "policy" of establishing uniform rates. He cannot, therefore, support his position in any regard.

At the August 7, 1990 Agenda Conference, at which we considered Southern States' motion, Mr. Weikel also argued that if we dismiss his protest, it will effectively preclude any meaningful customer participation in future proceedings. We do not agree. In fact, we believe that this Commission is quite liberal in allowing customer participation in proceedings before it. However, since it appears that Mr. Weikel's actual concerns relate to the continued appropriateness of uniform rates should there be any material physical improvements to the Duval County systems, we believe that this issue is more appropriate for Southern States' next Duval County rate case, not the instant one. Nevertheless, if Mr. Weikel continues to object to the current uniform rate structure, his interests may be adequately protected by this Commission's complaint procedures. Further, there is a workload control program currently underway to study the issue of uniform rate structures. Based upon Mr. Weikel's interest in this regard, we will docket this matter and invite Mr. Weikel to participate in the proceeding.

Upon consideration of the above, we find it appropriate to grant Southern States' motion to dismiss Mr. Weikel's petition. Accordingly, the hearing which was scheduled for August 16 and 17, 1990, is also cancelled. Further, since we have dismissed his petition, and since there were no other protests, we also find it appropriate to revive Order No. 22871 and declare it to be final and effective.

It is, therefore,

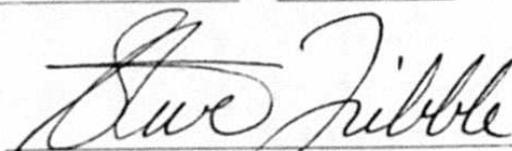
ORDERED by the Florida Public Service Commission that Southern States Utilities, Inc.'s motion to dismiss the Petition on Proposed Agency Action Order No. 22871 and Request For Hearing, filed May 21, 1990, by Alvin R. Weikel, is hereby granted. It is further

ORDERED that Order No. 22871 is revived and is hereby determined to be final and effective as of August 7, 1990. It is further

ORDERED that Docket No. 890951-WS be and is hereby closed.

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By ORDER of the Florida Public Service Commission,
this 27th day of August, 1990.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RJP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.